

**Supporting Statement for  
30 CFR Part 228—  
Cooperative Activities with States and Indian Tribes  
(OMB Control Number 1010-0087)  
(Expiration Date: August 31, 2003)**

**A. Justification**

**1. What circumstances make this collection of information necessary?**

The Secretary of the U.S. Department of the Interior (DOI) is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Minerals Management Service (MMS) performs the royalty management functions for the Secretary.

The Secretary of the Interior is authorized by Public Law 97-451, the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1732, and 30 U.S.C. 1701 et seq. to enter into cooperative agreements using the capabilities of tribes to carry out royalty audits and related investigation and enforcement activities. The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), Public Law 104-185, as corrected by Public Law 104-200, amended FOGRMA and essentially limited Part 228 to Indian tribes. As noted in § 228.3, this part does not apply to Federal lands. Federal lands are audited by States under the provisions of 30 CFR Part 227, Delegation to States. Cooperative agreements benefit both MMS and Indian tribes by helping to ensure proper product valuation, correct and timely production reporting, and correct and timely royalty payment through the application of an aggressive and comprehensive audit program. To be considered for a cooperative agreement, Indian tribes must comply with the regulations at 30 CFR 228 by submitting a written request to the Director, MMS, and preparing a proposal that details the work to be done. (See Attachment 1 for copies of the laws and regulations.)

**2. How, by whom, and for what purpose will the information be used?**

Tribes who want to do royalty audits in cooperation with MMS must submit a written request to enter into a cooperative agreement, signed by the tribal chairman or other appropriate official. The request should outline the activities to be undertaken and present evidence that the tribes can meet the standards established by the Secretary for the activities to be conducted.

After the request is accepted and a cooperative agreement is in effect, tribes must submit an annual work plan and budget as well as quarterly reimbursement vouchers. They must follow MMS standards, such as Government Auditing Standards, and as required in § 228.102.

**3. Does the collection involve the use of information technology, does it reduce the burden, and to what extent?**

Tribes who want to use electronic reporting in any phase of this information collection are encouraged to do so. We anticipate that at least one-half of the activity conducted under this information collection will use some form of information technology.

**4. Is the information duplicated by any other Federal agency, and can similar information be used or modified for this collection?**

Each cooperative agreement is unique to that particular tribe. The information collected does not duplicate information collected by any other Federal agency nor can any similar information be used or modified for this collection.

**5. What is the agency doing to minimize the burden on small businesses or other small entities?**

There is no adverse impact on small businesses or other small entities. The MMS has made the process of requesting a cooperative agreement as simple as possible so that even Indian tribes of small size and with limited resources may be considered for audit agreements. We provide telephone assistance, written guidelines, and onsite assistance for the preparation of cooperative agreements, annual work plans, and quarterly reimbursement vouchers.

**6. What are the consequences to the Federal program or policy activity if the information is not collected or is collected less frequently; and are there any technical or legal obstacles to reducing the burden?**

If this collection is not conducted or is conducted less frequently, we could not administer and delegate the cooperative audit functions to individual tribes as described in 30 CFR Part 228.

**7. Are there any special circumstances that require exceptions to 5 CFR 1320.5(d)(2) requiring respondents to: (i) report more often than quarterly, (ii) prepare written responses in fewer than 30 days after receipt, (iii) submit more than an original and two copies of any document, or (iv) retain records for more than 3 years?**

There are special circumstances with respect to (i) and (iv) as follows:

- Reporting more often than quarterly — The information required in a request to enter into a cooperative agreement to conduct audits is not collected on a regularly scheduled basis. It is required only when a tribe requests to be considered for an agreement. Once a cooperative agreement request has been approved, quarterly vouchers are required so that reimbursement may be made to the tribe. Also, an annual work plan and budget must be submitted.

- Records retention for more than 3 years — Tribes doing royalty audits under cooperative agreements are required by terms of the agreement and by the regulations at 30 CFR 228.103 to maintain all records used or developed as a consequence of activities conducted under the agreement for a period specified by MMS, generally 7 years. Records must be maintained for additional periods should there be an appeal as a result of the audit.

There are no special circumstances with respect to 5 CFR 1320.5(d)(2) (v) through (vii). However, in (viii), MRM and any tribe choosing to participate in a cooperative agreement will keep confidential, under the Freedom of Information Act, the Trade Secrets Act, and relevant Executive Orders, any and all data submitted that is privileged, confidential, or otherwise exempt.

#### **8. What efforts did the agency make to consult with the public and a representative sample of respondents?**

As required in 5 CFR 1320.8(d), MMS published a 60-day review and comment notice in the *Federal Register* on May 5, 2003 (68 FR 23759) (Attachment 2). We received no comments in response to this notice.

Frequent and routine contact between participating tribes and MMS employees allows participants to keep abreast of current issues in this cooperative program. We help tribes prepare their cooperative agreement proposals, statement of work, work plans, and budgets. We provide a package of instructions and examples, and we make personal visits and assist over the telephone.

#### **Currently, MMS has cooperative audit agreements with 8 tribes:**

Blackfeet Nation  
Oil & Gas Audit Department, Browning, Montana

Crow Nation  
Crow Tribal Council, Crow Agency, Montana

Jicarilla Apache Nation  
Dulce, New Mexico

Navajo Nation  
Window Rock, Arizona

Shoshone and Arapaho Tribes  
Fort Washakie, Wyoming

Southern Ute Tribe

Ignacio, Colorado

Ute Tribe  
Fort Duchesne, Utah

Ute Mountain Ute Tribe  
Towaoc, Colorado

**9. Will payments or gifts be provided to respondents?**

MMS will reimburse tribes who have an approved cooperative audit agreement, work plan, and budget when they submit quarterly vouchers. Tribes will be reimbursed for the normal and routine costs of conducting audits.

**10. What assurance of confidentiality is provided to respondents?**

Commercial or financial information provided to MMS relative to minerals removed from Indian leases may be proprietary. Trade secrets, proprietary and other information are protected in accordance with standards established by FOGRMA of 1982, as amended (30 U.S.C. 1733), the Freedom of Information Act (5 U.S.C. 552(b)(4)), and Department regulations (43 CFR 2). The Indian Minerals Development Act of 1982 (25 U.S.C. 2103) provides that all information related to any Indian minerals agreement covered by the Act in the possession of the Department shall be held as privileged proprietary information. Storage of proprietary information and access to it is controlled by strict security measures.

Conditional requirements of a cooperative audit agreement are that Indian tribes must:

- a. Consent in writing to restrict the dissemination of trade secrets, proprietary and other confidential the information to those who are directly involved in an audit or investigation, and who have a need to know;
- b. Accept liability for wrongful disclosure of proprietary information;
- c. Demonstrate that proprietary information is essential to the conduct of an audit or investigation and waive sovereign immunity by express consent for wrongful disclosure by such tribe.

Also, P.L.97-451, FOGRMA, 30 U.S.C. 1733, Section 203, states that the United States shall not be liable for the wrongful disclosure by any individual or Indian tribe of any information provided to such individual or Indian tribe pursuant to any cooperative agreement authorized by this Act.

**11. Does the information collected include any questions of a sensitive nature?**

None of the information requested is considered sensitive.

## 12. What is the estimated reporting and recordkeeping “hour” burden?

The estimated annual reporting burden for tribes who have cooperative audit agreements is 1,912 hours. We expect the 8 tribes who have cooperative audit agreements to submit approximately 66 responses in order to convey the required information. The burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Using an average cost of \$50 per hour, the total cost to respondents is \$95,600. There are no additional recordkeeping costs.

**Tribal Respondent Annual Burden Hour Chart**

| <b>30 CFR Section</b>   | <b>Reporting Requirement</b>  | <b>Burden Hours per Response</b> | <b>Annual Number of Responses</b> | <b>Annual Burden Hours</b> |
|---|---|----------------------------------|-----------------------------------|----------------------------|
| 228.100 (a) and (b)(1), (2), (3), and (4); 228.101(c); 228.107(b) | . . . Indian tribe may request the Department to enter into a cooperative agreement by sending a letter from the . . . tribal chairman . . . to the Director of MMS. The request for an agreement shall be in a format prescribed by MMS . . . Agreements . . . shall be valid for . . . 3 years and shall be renewable . . . upon request of the . . . Indian tribe . . . Indian tribe may unilaterally terminate an agreement by giving a 120-day written notice of intent to terminate. Each cooperative agreement shall contained detailed schedules identifying those activities and costs which qualify for funding and the procedures, timing, and mechanics for implementing Federal funding. | 200                              | 1                                 | 200                        |
| 228.101(d)  | . . . Indian tribe will be given 60-days to respond to the notice of deficiencies and to provide a plan for correction of those deficiencies.   | 80                               | 1                                 | 80                         |
| 228.103 (a) and (b)   | The . . . Indian tribe entering into a cooperative agreement . . . must retain all records, reports, working papers, and any backup materials...The...Indian tribe shall maintain all books and records . . . .   | 120                              | 8                                 | 960                        |
| 228.105(a) (1) and (2)  | The Department may . . . reimburse the . . . Indian tribe up to 100 percent of the costs of eligible activities. Eligible activities will be agreed upon annually upon the submission and approval of a workplan and funding requirement. A cooperative agreement may be entered into with . . . Indian tribe, upon request, without a requirement for reimbursement of costs by the Department.  | 60                               | 8                                 | 480                        |

| <b>30 CFR Section</b> | <b>Reporting Requirement</b>  | <b>Burden Hours per Response</b> | <b>Annual Number of Responses</b> | <b>Annual Burden Hours</b> |
|-----------------------|---|----------------------------------|-----------------------------------|----------------------------|
| 228.105(c)            | The . . . Indian tribe shall submit a voucher for reimbursement of eligible costs incurred within 30-days of the end of each calendar quarter. The . . . Indian tribe must provide the Department a summary of costs incurred, for which the . . . Indian tribe is seeking reimbursement, with the voucher. | 4                                | 48                                | 192                        |
| <b>Total</b>          |   |                                  | <b>66</b>                         | <b>1,912</b>               |

**13. What is the estimated reporting and recordkeeping “non-hour” cost burden of the collection of this information, excluding any costs identified in Items 12 and 14?**

This collection of information does not require capital and start-up costs by respondents. We have identified no reporting or recordkeeping “non-hour” cost burdens for this collection of information.

**14. What is the estimated annualized cost to the Federal Government?**

We estimate that the Federal Government will spend 2,000 hours annually to analyze, review, and handle the required information. Based on \$50 per hour, the annualized cost to the Federal Government is \$100,000.

### **Cost Breakdown for Federal Government**

| <b>CFR Section</b>  | <b>MMS Processing Time/Request</b> | <b>Annual Number of Requests</b> | <b>Total MMS Processing Time</b> | <b>Cost to Federal Government</b> |
|---|------------------------------------|----------------------------------|----------------------------------|-----------------------------------|
| 228.100 (a) and (b)(1), (2), (3), and (4); 228.101(c); 228.107(b) | 400                                | 3                                | 1,200                            | \$60,000                          |
| 228.101(d)  | 80                                 | 1                                | 80                               | \$4,000                           |
| 228.103 (a) and (b)   | 0                                  | 0                                | 0                                | 0                                 |
| 228.105(a) (1) and (2)  | 80                                 | 8                                | 640                              | \$32,000                          |
| 228.105(c)  | 2                                  | 40                               | 80                               | \$4,000                           |
| <b>Totals</b>   |                                    | 52                               | 2,000                            | \$100,000                         |

**15. Is the agency requesting any program changes or adjustments reported in Items 13 and 14 of the Form OMB 83-I?**

In Item 13 of Form OMB 83-I, the current OMB inventory is 1,224 hours. We are increasing the burden hours by 688 hours to 1,912 hours ( $1,224 + 688 = 1,912$ ). This increase represents a program change reduction of 504 burden hours because RSFA limits Part 228 to Indian tribes and therefore States do not need to respond. It also reflects a program change increase of 1,192 burden hours to cover existing and overlooked requirements for a net program change increase of 688 hours. There are no changes to Item 14 of Form OMB 83-I.

**16. Are there plans for tabulation and publication of the results of the information collection?**

The data collected will not be tabulated and published for statistical use.

**17. Is the agency seeking approval to not display the expiration date?**

We are not seeking approval to not display the expiration date.

**18. Is the agency requesting exceptions to the certification statement in Item 19 of Form OMB 83-I?**

To the extent the topics apply to this collection of information, we are not requesting exceptions to the "Certification of Paperwork Reduction Act Submissions."

**B. Collections of Information Employing Statistical Methods**

This section is not applicable. We will not employ statistical methods in this information collection.